

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND
INTERFERENCES**

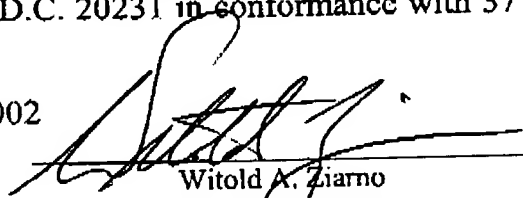
Applicant: Witold A. Ziarno
Serial No.: 09/173,109
Filed: October 15, 1998
Group: 3622
Examiner: John L. Young
Title: INTERNET LINKED COMPUTER PERIPHERAL, METHOD OF
USING THE INTERNET LINKED COMPUTER PERIPHERAL,
AND SYSTEM RELATED THERETO.

#16

CERTIFICATE OF TRANSMISSION 37 C.F. R 1.6(d)

I certify that this correspondence and the documents referred to as attached herein are being transmitted by facsimile to the Assistant Commissioner for Patents, Washington, D.C. 20231 in conformance with 37 C.F.R. 1.6(d) on July 3, 2002.

Dated: July 3, 2002


Witold A. Ziarno
Reg. No. 39,888

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

REPLY BRIEF

The Applicant responds to the points of argument raised in the Examiner's Answer (Paper No. 15).

Page 2, Point 1

- (1) Applicant submits that the real party in interest needs to be amended. The real party in interest is currently, Picrun Corporation, a Delaware Corporation, having a place of business as 6301 Offshore Drive, #319, Madison, WI 53705.

Page 3, Point 6

The Examiner has conceded and does not dispute that the record is devoid of any motivation to select elements from the reference(s) of record, alone or in combination with the Examiner's *purported* art. The Applicant argued throughout his Appeal Brief that the Examiner has failed to provide any motivation to select individual elements from the art of record, alone or in combination with the *Examiner's purported art*, and then to combine these elements:

The Examiner has failed to provide motivation from the art of record for an artisan to select or combine elements from the art cited in such a way as to reconstruct the Applicant's claimed inventions as claimed in claims 21-41.

Appeal Brief, page 30.

The Examiner has failed to provide a motivation from the evidence of the art of record to make the **selection** and **combination** of elements, and method steps with respect to the claims in Chart One.

Appeal Brief, page 32.

The Examiner's Answer is silent with respect to rebuttal of the Applicant's assertion that the Examiner has provided no motivation to select the elements of the claimed invention from the art of record and the *purported art*. Indeed, the Examiner agrees with the Applicant and states: "The Appellant's statement of the issues in the brief is correct." Paper No. 15, page 3, line 5. The Applicant's statement of the issues reads:

Issues (37 CFR 1.92 (C)(6))

1. Whether a *prima facie* case of obviousness of claims 21-41 (drawn to a method, computer peripheral and kit) under 35 U.S.C. § 103 has been established in view of a single reference, Schneier, Bruce APPLIED CRYPTOGRAPHY (New York: John Wiley & Sons, Inc. 1994) ("Schneier"), in view of the Examiner's understanding of *purported* common knowledge in the art absent any evidentiary record related thereto, and **without any suggestion or motivation to *select or combine* elements from the combination of *purported* art.**

Appeal Brief, page 6 (Emphasis added).

The Examiner has conceded that the combined art of record fails to provide any motivation to select purported elements from the combined art of record to reconstruct the claimed inventions.

Page 3, Point 7

Appellant traverses the Examiner's position with respect to the grouping of the claims. Specific arguments were provided by Appellant below traversing the Examiner's positions.

Pages 4→17, Point 10 (Grounds of Rejection - Claim rejections -35 U.S.C. 103)

The rejections of claims 21-41, on the above referenced pages of the Examiner's Answer are, in part, based upon *purported* facts within the personal knowledge of the Examiner (e.g. "concepts and advantages of which "official notice is taken" and items of *purported art* which are *alleged* to be "notoriously well known by one of ordinary skill in the art at the time of the invention"). Yet,

there is no evidence of record to support the Examiner's assertion that the *purported* facts are *prior* art to the invention of record. Applicant traverses the Examiner's assertion that the *purported* facts are *prior* art to the invention of record.

The Applicant demanded on July 3, 2002 that the Examiner's reference to the *purported* prior art be supported by an Affidavit of the Examiner, including data as specific as possible under 37 C.F.R. Section 1.104(b)(2), including but not limited to dates for this *purported prior art*.

The Applicant *previously* timely challenged the Examiner to provide evidence regarding the *purported prior art*. That is, the Examiner rejected claims 21-41 in the Office Action dated October 14, 2001 (Paper No. 11), in part, based upon the Examiner's *purported facts*. *Directly* in response to Paper No. 11, an Amendment dated *April 12, 2001* was filed ("Amendment"). The Examiner failed to provide any references to support allegations that the *purported art* was prior art to the instant invention.

To date, there is no evidence of record to support the Examiner's assertion that the *purported* facts are prior art to the invention of record. Applicant once again traverses the Examiner's assertion that the *purported* facts are prior art to the invention of record, including but not limited to all of the Examiner's *purported prior art* concepts and advantages of which

“official notice is taken” and items of *purported art* which are *alleged* to be “notoriously well known by one of ordinary skill in the art at the time of the invention.”

Page 17, Point 11

Applicant has seasonably challenged the Examiner to provide evidence supporting the Examiner’s *unsubstantiated* allegations that the Applicant’s claimed recitations are prior art to the Applicant’s own invention. To date, the Examiner has failed to do so. There is no evidentiary basis for the Examiner’s assertion that the Examiner’s statements are in the prior art, and no legal or factual basis regarding the Examiner’s assertion that Applicant has made any admissions regarding *the Examiner’s purported prior art*. The Applicant has previously traversed, and currently traverses the Examiner’s assertions that the Examiner’s *purported* prior art is prior art to the instant invention.

The Examiner noted that in the prior Office Action (Paper# 11) he relied upon Official Notice evidence in the rejections of claims 22-25 & 28-31. The Examiner asserted that the Applicant was charged with rebutting the well known statement in the next reply after the Office action in which the well known statement was made.

The Examiner further incorrectly noted that Applicant failed to seasonably challenge the Official Notice evidence relied upon in the obviousness rejections of claims 22-25 & 28-31. The Examiner incorrectly noted that Applicant has not made a demand for evidence, and incorrectly noted that Applicant failed to make

a demand for evidence in any request for discretionary reconsideration during prosecution. The Examiner also incorrectly noted that the well known statements were taken to be admitted prior art.

The Applicant seasonably challenged the *purported* Official Notice evidence relied upon in the obviousness rejections of claims 22-25 & 28-31. The Applicant has made a demand for evidence in the request for discretionary reconsideration during prosecution. Applicant has not made any admissions about what is prior art with respect to the present invention.

In particular, the Applicant previously timely challenged the Examiner to provide evidence regarding the *purported prior art*. That is, the Examiner rejected claims 21-41 in the Office Action dated October 14, 2001 (Paper No. 11), in part, based upon the Examiner's *purported facts*. *Directly* in response to Paper No. 11, an Amendment dated *April 12, 2001* was filed ("Amendment").

In the Amendment, Applicant seasonably traversed the Examiner's *purported* "facts" and *purported* "well known" statements as indicated in Chart One below. Applicant's seasonable challenge constituted a demand for evidence, and Applicant asserted that the Examiner failed to provide evidence to support the Examiner's rejection in Paper No. 11. The Applicant stated that it was necessary for the Examiner to present evidence to support the rejections based upon these *purported* statements, and not simply proffer the Examiner's *purported statements* as shown in the chart below. Applicant challenged the Examiner and stated that the

Examiner's *purported* facts were not evidence upon which a rejection could be properly based (e.g. were not *prior art*). "A challenge to the taking of judicial notice must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying the judicial notice." MPEP 2144.03 (Citing *In re Boon*, 439 F.2d 724 (CCPA 1971)). Clearly, the Applicant's challenges to the Examiner constituted adequate information and argument to create a reasonable doubt regarding the circumstances justifying the judicial notice.

Chart One

Claims	Applicant's seasonable challenge and demand for evidence in Amendment with citation to Amendment page and line number
21-23	<p>"In order to establish a <i>prima facie</i> case of obviousness, it is necessary for the examiner to present evidence" Page 16, lines 9→10.</p> <p>"The Examiner's 'assumptions' with respect to what was allegedly well known in the area of Internet shopping at the time the invention was made do not constitute art upon which a proper rejection can be based." Page 15, lines 3.</p> <p>"Applicant argues that [] the examiner's assumptions do not</p>

	<p>constitute the disclosure of the prior art. [] There is simply no teaching or suggestion for a smart card reading computer peripheral that solves the problems of Internet shopping by providing a smart card reader and a secure link as claimed by Applicant.”</p> <p>Page 15, lines 3→5 and 11→13.</p> <p>“There is no evidence or suggestion to use multiple encryption on a computer peripheral or encryption of credit or debit card information or using the method steps claim[ed] in the sequence claimed by Applicant.</p> <p><i>The Examiner’s rejection is based upon a lack of evidence.</i>” (Emphasis added. Page 16, lines 18→21.</p>
24-33	<p>“The Examiner has produced no evidence [] of this claim recitation, including but not limited to the timing of the encryption or coding.”</p> <p>Page 20, lines 15→16.</p> <p>“The Examiner has produced no evidence of a suggestion of this claim recitation, including but not limited to the timing of the encryption or coding.”</p> <p>Page 21, lines 2→3.</p> <p>“The Examiner has produced no evidence of a suggestion of these claim recitations, including but not limited to the timing of the encryption or coding or the types of devices upon which these recitations</p>

	<p>are executed.” Page 21, lines 2→3.</p> <p>“As stated above there is no factual support for the assertion the Examiner makes.” Page 26, line 6.</p>
34-41	<p>“The Examiner has failed to supply any evidence to show that these elements of Applicant’s claimed kit are taught or fairly suggested in the art of record, alone or in combination.” Page 28, lines 4→6.</p>

“When facts constituting the state of the art are normally subject to the possibility of rational disagreement among reasonable men, they are not amenable to the taking of [judicial] notice.” *In re Eynde*, 480 F. 2d 1364, 1370 (CCPA 1973)(Emphasis added).

Applicant challenged the Examiner to present evidence to support the rejections of claims 21-41 of the instant application in the Amendment filed in response to Paper no. 11. The Examiner failed to present any evidence supporting the *purported* facts underlying the rejections of these claims, including but not limited to prior art references. “[A]llegations concerning specific ‘knowledge’ of the prior art, which might be peculiar to a particular art should [] be supported.” *In re Ahlert*, 424 F. 2d 1088, 1091 (CCPA 1970). “The facts so noticed serve to ‘fill the gaps’ which might exist in the evidentiary showing and should **not comprise**

the principle evidence upon which a rejection is based.” MPEP 2144.03 (Emphasis added.). Here, the *purported* judicial notice evidence impermissibly serves as the Examiner’s principle evidence. This *purported* official notice evidence lacks any evidentiary support.

Since the Examiner failed to provide principal evidence to support his unsubstantiated allegations about what was in the *Examiner’s purported art*, Applicant *once again*, on July 3, 2002, requested that evidence, and requested the Examiner to proffer an Affidavit pursuant to 37 C.F.R. Section 1.104(b)(2) to support his unsubstantiated allegations. The Applicant *once again* called for the Examiner to present hard, concrete evidence of the concepts and advantages of which “official notice is taken” and items of *purported art* which are *alleged* to be “notoriously well known by one of ordinary skill in the art at the time of the invention in the form of an affidavit under 37 C.F.R. Section 1.104(b)(2).

To date, the Examiner has failed to provide any concrete evidence in the record to support core factual findings of that which is alleged to be “basic knowledge” or “common sense.” The Examiner has failed to satisfy the standard in In re Zurko, ___ F.3d ___ (Fed. Cir. 2001):

[D]eficiencies of the cited references cannot be remedied by the Board’s [and Examiner’s] general conclusions about what is “basic knowledge” or “common sense” to one of ordinary skill in the art. [] We cannot accept these findings by the Board [or the Examiner]. This assessment of basic knowledge and common sense was not based on any evidence in the record and, therefore, lacks

substantial evidence support. [] With respect to core factual findings in a determination of patentability, however, the Board [and Examiner] cannot simply reach conclusions based on its own understanding or experience -- or on its assessment of what would be basic knowledge or common sense. Rather, the Board [or Examiner] must point to some concrete evidence in the record in support of these findings.² To hold otherwise would render the process of appellate review for substantial evidence on the record a meaningless exercise. Baltimore & Ohio R.R. Co. v. Aderdeen & Rockfish R.R. Co., 393 U.S. 87, 91-92 (1968) (rejecting a determination of the Interstate Commerce Commission with no support in the record, noting that if the Court were to conclude otherwise "[t]he requirement for administrative decisions based on substantial evidence and reasoned findings -- which alone make effective judicial review possible -- would become lost in the haze of so-called expertisc"). **Accordingly, we cannot accept the Board's [or Examiner's] unsupported assessment of the prior art.**

Similarly, the Examiner has failed to meet the evidentiary challenge of

In re Sang Su Lee:

When patentability turns on the question of obviousness, the search for and analysis of the prior art includes evidence relevant to the finding of whether there is a teaching, motivation, or suggestion to select and combine the references relied on as evidence of obviousness. [] "The factual inquiry whether to combine references must be thorough and searching." *Id.* **It must be based on objective evidence of record.** This precedent has been reinforced in myriad decisions, and cannot be dispensed with. [] **The need for specificity pervades this authority.** [] **This factual question of motivation is material to patentability, and could not be resolved on subjective belief and unknown authority.** It is improper, in determining whether a person of ordinary skill would have been led to this combination of references, simply to "[use] that which the inventor taught against its teacher." W.L. Gore v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983). **Thus the Board [and Examiner] must not only assure**

that the requisite findings are made, based on evidence of record, but must also explain the reasoning by which the findings are deemed to support the agency's conclusion.[]

In its decision on Lee's patent application, the Board rejected the need for "any specific hint or suggestion in a particular reference" to support the combination of the Nortrup and Thunderchopper references. Omission of a relevant factor required by precedent is both legal error and arbitrary agency action. []

The "common knowledge and common sense" on which the Board relied in rejecting Lee's application are not the specialized knowledge and expertise contemplated by the Administrative Procedure Act. Conclusory statements such as those here provided do not fulfill the agency's obligation. This court explained in Zurko, 258 F.3d at 1385, 59 USPQ2d at 1697, that "deficiencies of the cited references cannot be remedied by the Board's general conclusions about what is 'basic knowledge' or 'common sense.'" The Board's findings must extend to all material facts and must be documented on the record, lest the "haze of so-called expertise" acquire insulation from accountability. "Common knowledge and common sense," even if assumed to derive from the agency's expertise, do not substitute for authority when the law requires authority. [] The case on which the Board relies for its departure from precedent, In re Bozek, 416 F.2d 1385, 163 USPQ 545 (CCPA 1969), indeed mentions "common knowledge and common sense," the CCPA stating that the phrase was used by the Solicitor to support the Board's conclusion of obviousness based on evidence in the prior art. Bozek did not hold that common knowledge and common sense are a substitute for evidence, but only that they may be applied to analysis of the evidence. Bozek did not hold that objective analysis, proper authority, and reasoned findings can be omitted from Board decisions. Nor does Bozek, after thirty-two years of isolation, outweigh the dozens of rulings of the Federal Circuit and the Court of

Customs and Patent Appeals that determination of patentability must be based on evidence. This court has remarked, in Smiths Industries Medical Systems, Inc. v. Vital Signs, Inc., 183 F.3d 1347, 1356, 51 USPQ2d 1415, 1421 (Fed. Cir. 1999), that Bozek's reference to common knowledge "does not in and of itself make it so" absent evidence of such knowledge.[]

The patent examiner and the Board are deemed to have experience in the field of the invention; however, this experience, insofar as applied to the determination of patentability, must be applied from the viewpoint of "the person having ordinary skill in the art to which said subject matter pertains," the words of section 103. In finding the relevant facts, in assessing the significance of the prior art, and in making the ultimate determination of the issue of obviousness, the examiner and the Board are presumed to act from this viewpoint. **Thus when they rely on what they assert to be general knowledge to negate patentability, that knowledge must be articulated and placed on the record.** The failure to do so is not consistent with either effective administrative procedure or effective judicial review. The board [and Examiner] cannot rely on conclusory statements when dealing with particular combinations of prior art and specific claims, but must set forth the rationale on which it relies.

There is no evidence of record to support the Examiner's assertion that the *purported* facts are prior art to the invention of record. Applicant once again disputes and traverses the Examiner's assertion that the *purported* facts are prior art to the invention of record, including but not limited to all of the Examiner's *purported prior art* concepts and advantages of which "official notice is taken" and items of *purported art* which are *alleged* to

be “notoriously well known by one of ordinary skill in the art at the time of the invention.”

Pages 18→25, Point 11

The Examiner concedes that Schneier, Bruce APPLIED CRYPTOGRAPHY (New York: John Wiley & Sons, Inc. 1994) (herein referred to as “Schneier”) **“does not explicitly recite the claimed elements and limitations verbatim.”** Examiner’s Answer, page 23, lines 3-4. “To establish a *prima facie* case of obviousness, three criteria must be met. [] The prior references (or references when combined) must teach or suggest all the claim limitations.” MPEP 2143. “To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art.” *In re Royka*, 490 F. 2d 981 (CCPA 1974)(Emphasis added.). “All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F. 2d 1382, 1385 (CCPA 1970). Based upon this concession alone, the Examiner’s rejections are improper and must be reversed.

This is not surprising since Schneier is a reference not directed at solving any of the problems consumers face when making purchases with credit or debit cards on the Internet. The reference is deficient evidence for establishing a *prima facie* case of obviousness or anticipation as the Examiner has conceded.

The Examiner asserts that he needs to **modify** the purported teachings of Schneier to arrive at the claimed invention, and that the Examiner "meets the requirements of the motivation test for modifying by citing from Schneier cogent reasons to modify the teachings of Schneier to produce the claimed invention." Examiner's Answer, page 18, lines 14-16. The Examiner's purported basis to modify Schneier comes directly from the Applicant's patent application and not the purported prior art knowledge. All of the Examiner's *purported* teachings take the same form: **A copy of Applicant's claimed recitation which the Examiner asserts is in the prior art, e.g. "Official Notice' is taken that both the concept and the advantages of [the claim recitation]."** The Examiner has verbatim copied portions of the Applicant's claimed invention, stated that this is the prior art, and used the Applicant's own teaching as the basis for modifying Schneier. This is an error of law.

The Applicant respectfully asserts that the Examiner has *de facto* conceded that Applicant's specific claim recitations in claims 21-41 are missing in Schneier. This *de facto* concession is based on the Examiner's failure to point to the specific portion of the reference where the Applicant's claimed recitations are alleged by the Examiner to be located. The Examiner has erred, as a matter of law, by failing to provide substantial evidence supporting his key factual findings. The rejections

of these claims must be reversed.

The Examiner concedes that that the only reference he is only relying upon is Schneier, and no other reference of record. The Applicant has clearly pointed out where Schneier does not teach or fairly suggest the claimed recitations of claims 21-41. The Examiner agrees with Applicant that these recitations are missing from Schneier as shown in Chart One below.

The Examiner's Answer attempts to side step the concession the Examiner has made. To wit, the Examiner implausibly argues that:

Appellant's brief (page 34, lines 1-6) alleges that the "Examiner concedes that Schneier fails to teach all of the elements claimed in claim 21..."; however, this is not the case. The phrase "does not explicitly show..." must not be incorrectly construed as a concession of a deficiency in the obviousness rejection. To the contrary, the phrase "does not explicitly show..." is merely the transition phraseology to the factual inquires set forth in *Graham v. John Deer Co.*, 383 U.S. 1, 86 S. Ct. 684, 15 L.Ed. 2nd 545 (1966).

Therefore, taken in the context of the factual inquires set forth in *Graham v. John Deer Co.*, 383 U.S. 1, 86 S. Ct. 684, 15 L.Ed. 2nd 545 (1966), 148 USPQ 459 and the 35 USC §103(a) obviousness rejection requirements, the prior Office Action recitations of "Schneier does not explicitly show..." does not constitute an admission of any deficiency in the obviousness rejection; to the contrary such recitations merely provide the transition phraseology to the factual inquires set forth in *Graham v. John Deer Co.*, 383 U.S. 1, 86 S. Ct. 684, 15 L.Ed. 2nd 545 (1966), 148 USPQ 459

Examiner's Answer, Page 23-24 (Emphasis added.).

The Examiner's position is not well taken. The Examiner is required under the Supreme Court caselaw, e.g. *Graham v. John Deere, Co.*, 383 U.S. 1 (1966) to clearly ascertain the "differences between the prior art and the claims at issue" and

PTO procedure under the MPEP 2141: "Office policy has been to follow *Graham v. John Deere Co.* in the consideration and determination of obviousness. [T]he [] factual inquiries enunciated therein as a background for determining obvious are []:

(B) Ascertaining the differences between the prior art and the claims in issue." The Examiner has identified which *purported teachings* are absent from the primary Schneier reference, and not merely provided "transition phraseology" as the Examiner states.

In his Appeal Brief, the Applicant expressly identified the deficiencies of the Schneier reference, alone and in combination with the *Examiner's purported prior art* in Chart Two. Chart Two below was presented in Applicant's Appeal Brief. Chart Two recited the claimed recitations not taught or fairly suggested in the combined art of record for the claims present before the Honorable Board. The Examiner's rejections which were based solely upon that which the Examiner asserted was "**basic knowledge**" or "**common sense**" to one of ordinary skill in the art appeared next to the missing claim recitation. With respect to core factual findings in a determination of patentability of Claims 22 on, the Examiner's Answer did not point to any concrete evidence in the record to support of these findings as required to do so under *In re Zurko*. Accordingly, the Examiner's unsupported assessment of the prior art cannot be accepted, and the rejections must be reversed.

Chart Two

Claim(s)	Claim recitation not taught or fairly suggested by combined art	Quote from record where Examiner concedes that Schneier does not teach specific claim recitations:	Finding upon which rejection is based involving Examiner's <i>purported</i> understanding of what is basic knowledge or common sense
21	An Internet linked computer peripheral as an input device for a personal computer or workstation comprising, in combination: Smart card reader for reading credit and/or debit card information from an information bearing smart credit and/or debit card; and, a secure link to the Internet.	" <u>Schneier</u> does not explicitly show "credit or debit cards"." Paper No. 11, p. 4.	"It would have been obvious at the time the invention was made to a person having ordinary skill in the art that the <u>Schneier's</u> (pp. 296-297) "smart card" disclosure of would have been selected in accordance with "credit or debit cards" because smart credit and debit cards would have been notoriously well known by one of ordinary skill in the art at the time of the invention." Paper No. 11, p. 4

22	<p>The computer peripheral of claim 21 in which the secure link to the Internet comprises an encryption routine on the computer peripheral encrypting the credit and/or debit card information prior to transmission of the credit or debit card information to the personal computer or workstation.</p>	<p>"<u>Schneier</u> does not explicitly show "the secure link to the Internet comprises encryption means routine on the computer peripheral encrypting the credit and/or debit card information prior to transmission of the credit or debit card information to the personal computer or workstation." <i>Id.</i> at p. 4.</p>	<p>" "Official Notice" is taken that both the concept and the advantages of "the secure link to the Internet comprises an encryption routine on the computer peripheral encrypting the credit and/or debit card information prior to transmission of the credit or debit card information to the personal computer or workstation..." because such concepts and advantages would have provided means to safeguard the credit and/or debit card information prior to transmission of the credit or debit card information." <i>Id.</i> at 4.²¹</p>
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23	The computer peripheral of claim 21 in which the secure link further comprises an encryption routine at the personal computer or work station encrypting the credit or debit card information prior to transmission of the credit or debit card information onto the Internet.	<u>"Schneier</u> does not explicitly show "the secure link further comprises an encryption routine at the personal computer or work station encrypting the credit or debit card information prior to transmission of the credit or debit card information onto the Internet..." <i>Id.</i> at 5.	"Official Notice" is taken that both the concept and the advantages of "the secure link further comprises an encryption routine at the personal computer or work station encrypting the credit or debit card information prior to transmission of the credit or debit card information onto the Internet... ." because such concepts and advantages would have provided means to safeguard the credit and/or debit card information prior to transmission of the credit or debit card information." <i>Id.</i> at 5.
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24	<p>A method comprising, providing individuals making monetary transactions with a smart card reading computer peripheral as an input device for a personal computer or workstation, said smart card reading computer peripheral designed to send monetary transaction data to said personal computer or workstation for delivery onto the Internet, and securely sending monetary transaction data read by said smart card reading</p>	<p>"<u>Schneier</u> does not explicitly show "providing individuals making monetary transactions with a smart card reading computer peripheral as an input device for a personal computer or workstation said smart card reading computer peripheral designed to send monetary transaction data to said personal computer or workstation for delivery onto the Internet, and securely sending monetary transaction data read by said smart card reading computer peripheral from the personal computer or workstation onto the Internet for further processing." <i>Id.</i> at 6.</p>	<p>"Official Notice" is taken that both the concept and the advantages of "providing individuals making monetary transactions with a smart card reading computer peripheral as an input device for a personal computer or workstation said smart card reading computer peripheral designed to send monetary transaction data to said personal computer or workstation for delivery onto the Internet, and securely sending monetary transaction data read by said smart card reading computer peripheral from the</p>
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25	<p>The method of claim 24 further comprising encrypting or coding at least a portion of the monetary transaction data entered by respective individuals prior to transmission of the monetary transaction data to the personal computer or the work station.</p>	<p>"Schneier does not explicitly show "encrypting or coding at least a portion of the monetary transaction data entered by respective individuals prior to transmission of the monetary transaction data to the personal computer or the work station..." <i>Id.</i> at 7.</p>	<p>"It would have been obvious at the time the invention was made to a person having ordinary skill in the art that the disclosure of Schneier (pp. 329), i.e., "Message Digest" would have been selected in accordance with "a portion of the monetary transaction data entered by respective individuals. . . ." of messages, because "Message Digest" capability would have provided a fingerprint of the message that is unique. (See Schneier pp. 329-330); furthermore, "Official Notice" is taken that both the concept and the advantages of</p>
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26	<p>The method of claim 24 further comprising encrypting or coding at least a portion of the monetary transaction data entered by respective individuals prior to transmission of the card information to the Internet.</p>	<p>"Schneier does not explicitly show "a portion of the monetary transaction data entered by respective individuals." <i>Id.</i> at 8.</p>	<p>"It would have been obvious at the time the invention was made to a person having ordinary skill in the art that the disclosure of Schneier (pp. 329). i.e., "Message Digest" would have been selected in accordance with "a portion of the monetary transaction data entered by respective individuals... " of messages, because "Message Digest" capability would have provided a fingerprint of the message that is unique. (See Schneier pp. 329-330)." <i>Id.</i> at 8-9.</p>
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27	The method of claim 25 further comprising encrypting or coding at least a portion of the monetary transaction data entered by respective individuals prior to transmission of the card information to the Internet.		"Claim 27 is rejected for substantially the same reasons as claim 26." <i>Id.</i> at 9.
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28	<p>The method of claim 24 in which said monetary transaction data further comprises credit card or debit card information, and in which said securely sending monetary transaction data read by said smart card reading computer peripheral from the personal computer or workstation onto the Internet for further processing further comprises presenting the credit card or debit card information to the smart card reading computer peripheral; transferring encrypted credit card</p>	<p>"Claim 28 is rejected for substantially the same reasons as claim 24." <i>Id.</i> at 9.</p>
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29	The method of claim 28 in which the card information is encrypted at the smart card reading computer peripheral.		"Claim 29 is rejected for substantially the same reasons as claim 25." <i>Id.</i> at 9.
30	The method of claim 28 in which the credit card or debit card information is encrypted at the personal computer or workstation.		"Claim 30 is rejected for substantially the same reasons as claim 25." <i>Id.</i> at 9.
31	The method of claim 28 in which the card information is encrypted at both the personal computer or workstation and at the smart card reading computer peripheral.		"Claim 31 is rejected for substantially the same reasons as claim 25." <i>Id.</i> at 9.

32	<p>The method of claim 28 further comprising correlating transaction information other than the card information to the encrypted debit or credit card information, and decoding the encrypted debit card or credit card information at a device remotely located from the personal computers or work stations.</p>	<p>"Schneier does not explicitly show "correlating transaction information other than the card information to the encrypted debit or credit card information." <i>Id</i> at 10.</p>	<p>"It would have been obvious at the time the invention was made to a person having ordinary skill in the art that the Schneier disclosure of "timestamping" would have been selected in accordance with "correlating transaction information other than the card information to the encrypted debit or credit card information. . . . " because "timestamping "would have been notoriously well known by one of ordinary skill in the art at the time of the invention." <i>Id.</i> at 10.</p>
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33	The method of claim 28 further comprising entering a PIN number.	<u>"Schneier</u> does not explicitly show "entering a PIN number." <i>Id.</i> at 10.	"It would have been obvious at the time the invention was made to a person having ordinary skill in the art that the Schneier disclosure of a unique identifier would have been selected in accordance with "entering a PIN number.. ." because unique identifiers would have been notoriously well known by one of ordinary skill in the art at the time of the invention." <i>Id.</i> at 10.
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34	<p>A kit for streamlining Internet transactions comprising:</p> <p>an Internet linked smart card reading computer peripheral as an input device for a personal computer; a communication link for communicating the credit or debit card information from the Internet linked smart card reading computer peripheral to a personal computer; and, a routine that allows the card information to be securely transferred from the computer peripheral to a remote computer other than the personal computer, the remote computer being communicatively linked to the Internet.</p>		<p>"Claim 34 is rejected for substantially the same reason as claim 21." <i>Id.</i> at 10.</p>
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35	<p>The kit of claim 34 further comprising a monitor, at least two speakers, and a keyboard; and, in which the remote computer is selected from the group consisting of an acquiring bank computer, and a card account processor computer.</p>	<p>"Schncier does not explicitly show "a monitor, speakers, and a kcyboard." " <i>Id.</i> at 11</p>	<p>"It would have been obvious at the time the invention was made to a person having ordinary skill in the art that the disclosure of Schncier would have been selected in accordance with "a monitor, speakers, and a keyboard. .. " because such a configuration would have been notoriously well known by one of ordinary skill in the art at the time of the invention." <i>Id.</i> at 1.</p>
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36	The kit of claim 34 further comprising the Internet.	<u>"Schneier</u> does not explicitly show a "kit further comprising the Internet." " <i>Id.</i> at 11.	"It would have been obvious at the time the invention was made to a person having ordinary skill in the art that the disclosure of Schneier would have been selected in accordance with a "kit further comprising the Internet.. ." because the pervasiveness of the Internet would have been notoriously well known by one of ordinary skill in the art at the time of the invention." " <i>Id.</i> at 11-12.
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37	The method of claim 32 further comprising crediting or debiting an account.	<u>"Schneier</u> does not explicitly show "crediting or debiting an account." " <i>Id.</i> at 12.	"It would have been obvious at the time the invention was made to a person having ordinary skill in the art that the disclosure of Schneier would have been selected in accordance with "crediting or debiting an account. . ." because such procedures in electronic monetary transactions were notoriously well known by one of ordinary skill in the art at the time of the invention." " <i>Id.</i> at 12.
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38	<p>The method of claim 37 further comprising sending a receipt comprising information representative of at least a portion of said monetary transaction data.</p>	<p>"Schneier does not explicitly show "sending a receipt comprising information representative of at least a portion of said monetary transaction data." " <i>Id.</i> at 12.</p>	<p>"It would have been obvious at the time the invention was made to a person having ordinary skill in the art that the disclosure of <u>Schneier</u> would have been selected in accordance with "sending a receipt comprising information representative of at least a portion of said monetary transaction data... " because such procedures in electronic monetary transactions of sending a confirmation or receipt associated with electronic monetary transactions were notoriously well known by one of ordinary skill in the art at the time of the invention." " <i>Id.</i> at 12-13.</p>
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39	The kit of claim 34 further comprising a multiplicity of personal computers.	"Schneier does not explicitly show "a multiplicity of personal computers." " <i>Id.</i> at 13.	"It would have been obvious at the time the invention was made to a person having ordinary skill in the art that the disclosure of Schneier would have been selected in accordance with "a multiplicity of personal computers... ." because such implementation of multiple peripherals was notoriously well known by one of ordinary skill in the art at the time of the invention." " <i>Id.</i> at 13.
40	The kit of claim 39 further comprising a plurality of monitors.	"Schneier does not explicitly show "a plurality of monitors." " <i>Id.</i> at 14.	"It would have been obvious at the time the invention was made to a person having ordinary skill in the art that the disclosure of Schneier would have been selected in accordance with "a plurality of monitors. . ." because such implementation of multiple peripherals was notoriously well known by one of ordinary skill in the art at the time of the invention." <i>Id.</i> at 14.

41	The kit of claim 40 further comprising a plurality of keyboards and speaker.	"Schneier does not explicitly show "a plurality of keyboards and speakers." <i>Id.</i> at 14.	"It would have been obvious at the time the invention was made to a person having ordinary skill in the art that the disclosure of Schneier would have been selected in accordance with "a plurality of keyboards and speakers..." because such implementation of multiple peripherals was notoriously well known by one of ordinary skill in the art at the time of the invention." <i>Id.</i> at 14.
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The Examiner's only response in the Examiner's Answer to the Applicant's detailed Chart Two (e.g. Chart One in Applicant's Appeal Brief) was with respect to Independent claim 21:

Appellant's brief perpetrates a disservice upon the Honorable Board; for example, Appellant's brief page 15 Chart One by presenting out of context arguments that tend to show that "credit or debit" cards are not contemplated by the Schneier reference is misleading. Appellant's brief fails to show that in the obviousness rejection of claim 21, the Examiner's Office Action reads in part:

As per claim independent claim 21, Schneier (pp. 117-124; pp. 428-435; pp. 296-297; & p. 436) suggests:

"An Internet linked computer peripheral as an input device for a personal computer or workstation comprising in combination: a smart card reader for reading credit and/or debit card information from an information bearing smart credit and/or debit card; and a secure link to the Internet."

Examiner's Answer, page 20. The original citation to the Examiner's Office

Action did not include any quotations from the Schneier reference. Only in the Examiner's Answer did he add the following quotations from the Schneier reference:

In this case, Schneier (p. 117, lines 13-14) discloses: "The existence of credit and debit cards has greatly reduced the amount of physical cash flowing through our society. . .

Schneier (p. 120, lines 13-20) discloses: "*Practical implementations of this protocol might require Alice to wait by the cash register during the merchant-bank interaction, much the same way as credit-card purchases are handled today. . . . Unless the merchant keeps a database of money orders it already received, the merchant will be fooled.*"

Examiner's Answer, page 20-21. Based upon these portions of Schneier the Examiner concludes that:

Schneier (p. 297, lines 13-15) in view of the above disclosures of Schneier contemplates the use of smart cards to solve credit/debit card problems related to digital cash transactions in industry and commerce.

Examiner's Answer, page 21.

The cited portions of Schneier in the Examiner's Answer do not correct the deficiencies of the art with respect to a teaching or fair suggestion of Applicant's claimed computer peripheral and kit elements and method steps. The citations to Schneier, alone or in combination with the art of record, are silent with respect to an Internet linked computer peripheral. They are silent with respect to the Internet. They are silent with respect to a secure link to the Internet. The Examiner's Answer failed to identify any teaching or suggestion in the combined art of record for these claim recitations.

As shown earlier, the Examiner conceded in his Answer that Schneier would need to be "modified" to teach the elements claimed in claim 21. Examiner's Answer, page 18-19. This is not surprising since Schneier is not directed to the computer peripheral art. Schneier is non-analogous art to the computer peripheral art or consumer Internet shopping art. Indeed, the title of Schneier states that it is directed to the Applied Cryptography art related to protocols, algorithms, and source code in C, and not the non-analogous computer peripheral art and consumer Internet shopping art. The Examiner in his Answer has conceded that there is no plausible motivation for an artisan in the computer peripheral/consumer Internet shopping art to look to the applied cryptography art of Schneier to obtain teachings therefrom. The Examiner's naked assertion that Schneier is in the field of the Applicant's endeavor or reasonably pertinent to the particular problem the invention solves does not help make Schneier analogous prior art. Examiner's Answer, page 24-25. The Examiner has made a naked statement unsupported with any sound reasoning as to why applied cryptography would be an art that a computer peripheral maker would look to for teachings therefrom.

The Examiner in his Answer did not provided a convincing line of reasoning to select or combine elements discussed in various parts of Schneier (a non-analogous source of art), alone or in combination with the other art of record. The Examiner did not dispute in his Answer that if one were to combine the various parts of Schneier, one would still not arrive at the Applicant's invention. The portions of Schneier the Examiner cites for the teaching of elements of a computer peripheral as recited in claim 21 did not teach or suggest what the

Examiner asserted it taught or suggested. The Examiner's did not dispute that there was no teaching in the combined art of computer peripherals or secure links to the Internet.

Where the Examiner commits error in the factual finding of what a reference teaches, the ultimate conclusion of obviousness is not supported by the evidence of record and must be reversed. In re Lueders, ___ F.3d (Fed. Cir. 1997) ("It appears from the Board's reasoning that it misinterpreted the above phrase from column 4, lines 43-46 of Hawkins concerning "other display/input means". The Board must have read this phrase as if it were "other display and/or input means". While Hawkins does suggest using a touch capacitive keyboard and a liquid crystal display, it does not suggest using both a pressure sensitive keyboard and a liquid crystal display. Rather, we are persuaded by Lueders' arguments which are based on examples from the art; absent any contrary evidence cited by the Board in its opinion, we reverse the Board on this point.")

The Examiner in his Answer has conceded that there is no mention of a smart card reading computer peripheral at all in Schneier, alone or in combination with the other art of record. The Examiner in his Answer has not challenged the Applicant's assertions in the Appeal Brief that

- ~ pp.117-124 of Schneier are silent with respect to any elements of a computer peripheral for Internet shopping.
- ~ pp. 428-435 of Schneier are silent with respect to any elements of a computer peripheral for Internet shopping.

- ~ pp. 296-297 of Schneier are silent with respect to any elements of a computer peripheral for Internet shopping.
- ~ p. 436 of Schneier is silent with respect to any elements of a computer peripheral for Internet shopping.

The Examiner's assertion with respect to p. 297, lines 13-15, and the alleged contemplated use of smart cards in Schneier, does not make up for the failure of the reference to teach anything about an Internet linked computer peripheral. It is hornbook patent law, that to establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claims against the prior art." *In re Wilson*, 424 F. 2d 1382 (CCPA 1970); MPEP 2143.03 ("All Claim Limitations Must be Taught or Suggested"). The Examiner cannot disregard claim recitations arbitrarily.

The teaching or suggestion of an Internet linked computer peripheral as an input device for a personal computer or workstation is missing from Schneier, alone or in combination with the other art of record. The invention solves the problem of easily entering and securely transmitting credit and debit card information onto a user's personal computer for Internet shopping, etc. when a consumer wants to use a smart card. The conventional way that this information was entered using non-smart cards is by typing the information from the front of a

plastic debit or credit card onto a keyboard of a computer. This process cannot be used with a smart credit or debit card that conveys electronic information therefrom to some other source.

None of the art or record, alone or in combination, was directed to solving the credit/debit card entry problems that consumers face when doing Internet shopping with smart cards. The invention also solved the problem of security for Internet shopping. None of the art of record, alone or in combination, solves both of these problems simultancously using the Applicant's claimed invention.

With respect to the recitations of claim 22, the Examiner in his Answer conceded that the pages of Schneier cited above have a void. The Examiner in his Answer failed to rebut the fact that Schneier, alone or in combination with the other art of record, failed to teach or fairly suggested a secure link to the Internet that comprises an encryption routine on a computer peripheral encrypting the credit and/or debit card information prior to transmission of the credit or debit card information to the personal computer or workstation. The Examiner's rejection is based upon a lack of evidence. It is improper and must be reversed.

With respect to claim 23, the Examiner in his Answer failed to rebut the fact that Schneier, alone or in combination with the other art of record, does not explicitly show the order in which the encryption is accomplished. The rejection of claim 23 is improper and must be reversed.

With respect to claim 24, the Examiner in his Answer failed to rebut the Applicant's assertion that the pages of Schneier, alone or in combination with the other art of record, do not teach or fairly suggest the method claimed by Applicant in claim 24. The Examiner in his Answer has not challenged the Applicant's

assertion that there is no teaching or suggestion in the art of record, alone or in combination, of a smart card reading computer peripheral as an input device for a personal computer or workstation. Since there is a gap in the art about this device, it follows that there is even a larger gap about what to do with such a device. Hence, it is not surprising that, none of the art of record, alone or in combination, fails to teach or fairly suggest providing individuals making monetary transactions with a smart card reading computer peripheral as an input device for a personal computer or workstation. The references aren't directed to solving the problems of Internet shopping. The Examiner in his reply has not challenged this assertion. Hence, it is not surprising that there is no suggestion or motivation in any of the art of record for designing the smart card reading computer peripheral to send monetary transaction data to the personal computer or workstation for delivery onto the Internet or for securely sending monetary transaction data read by the smart card reading computer peripheral from the personal computer or workstation onto the Internet for further processing. Schneier is silent about the data being read by one device, and being sent by a second device onto the Internet. The Examiner has not challenged this fact in his Answer. The rejection is improper and should be reversed.

With respect to claim 25, the Examiner in his Answer did not challenge the fact that Schneier does not explicitly show "a portion of the card information entered by respective individuals." The Examiner in his Answer did not challenge the fact that Schneier at pp. 329-330 does not help make out a *prima facie* case of obviousness of claim 25. This portion of the art generally relates to an MD4-5 128-

bit hash of an input message. The Examiner in his Answer did not challenge the Applicant's assertion that there is an absolute lack of any suggestion of the claimed method recitation. This portion of the art, alone or in combination with the other art of record, simply does not teach or fairly suggest Applicant's claimed method recitation of encrypting or coding at least a portion of the monetary transaction data entered by respective individuals prior to transmission of the monetary transaction data to the personal computer or the work station. The rejection is improper and must be reversed.

The Examiner has produced no evidence of a suggestion of the claim recitations of claims 26-27, and claims 29-31, including but not limited to the timing of the encryption or coding. For the reasons stated above, the rejection of claims 26 and 27 on the basis of the rejection of claims 24 and 26 is improper and must be reversed. The same holds true for claims 29-31.

The Examiner in his Answer has failed to rebut the Applicant's position with respect to claim 24. The Applicant reasserted in his Appeal Brief the previous position with respect to claim 24, and stated that it applied with equal force with respect to claim 28. The Examiner has not challenged the Applicant's assertions.

The Examiner in his Answer has failed to challenge the fact that none of the art of record, alone or in combination, fails to teach or fairly suggest the recitation of *off-loading the encrypted credit or debit card information from the Internet to a processor*. The art of record, alone or in combination, was not directed to solving the problems of on-line shopping. The Examiner in his Answer has failed to challenge the Applicant's assertion that it would not have

occurred to a person of ordinary skill to try the proposed combination of claimed features of claim 28 until the gap in the knowledge and understanding of those of ordinary skill in the art regarding the benefits of the combination of these features were understood.

The Examiner in his Answer has not challenged the Applicant's assertion that at the time the invention was made there was a significant gap in the knowledge and understanding of those of ordinary skill in the art necessary to combine the method steps of claim 28. The Examiner does not disagree Applicant that no one in the art was directing their attention to motivating Internet shopping by consumers with smart cards or addressing the problems associated with this kind of Internet shopping. The Examiner has not disagreed with Applicant that no one, except for Applicant, realized that global monetary transactions could be made quickly, without error and without risk of fraud using Applicant's claimed method and system.

The Examiner has not disagreed with Applicant that there is a cooperative relationship between the combination of Applicant's method recitations.

For the reasons stated above, the art is silent with respect to the location of any encryption, much less encryption of credit and debit card information. The Examiner tried to fill this gap in knowledge in the non-analogous art by citing to Schneier and relying on the disclosure of Schneier (pp. 329), i.e., "*Message Digest*."

Yet, the Examiner in his Answer did not refute that Schneier at pp. 329-330 does not help make out a *prima facie* case of obviousness of claims 29-31.

As stated previously, this portion of the art generally relates to an MD4-5 128-bit hash of an input message. The Examiner in his Answer did not refute the Applicant's assertion that there is an absolute lack of any suggestion of the claimed method recitations of claims 29-31. The Examiner has produced no evidence of a suggestion of these claim recitations, including but not limited to the timing of the encryption or coding or the types of devices upon which these recitations are executed. The rejection is improper and must be reversed.

With respect to claim 32, the Examiner in his Answer failed to challenge the fact that there is no teaching or fair suggestion in the art, alone or in combination for the recitation of off-loading as claimed in claim 28 or claim 32. As such, the rejection of claim 32 is improper and must be reversed.

The Examiner in his Answer does not refute that the citation to the art of record, alone or in combination, does not help the Examiner make out a *prima facie* case of obviousness of claim 32. The Examiner in his Answer did not challenge the assertion that pages 34-39 generally deal with digitally signing documents, that pages 70-71 generally relate to group signatures, and that pages 59-69 generally relate to secret sharing of secret sauces, certification that a document existed at a certain date (time-stamping), subliminal channels, undeniable digital signatures, and fail-stop digital signatures. The Examiner in his Answer did not challenge the Applicant with respect to the fact that these sections of art clearly do not fairly suggest Applicant's claimed recitations: correlating transaction information other than the card information to the encrypted debit or credit card information, *and* decoding the encrypted debit or credit card information at a device remotely located from the personal computers or work stations.

The Examiner in his Answer failed to challenge the fact that at the time the invention was made there was a significant gap in the knowledge and understanding of those of ordinary skill in the art necessary to combine the method steps of claim 32; that the art did not suggest, alone or in combination the decoding step or any of the other steps claimed; that no one in the art was directing their attention to motivating Internet shopping by consumers with smart cards or addressing the problems associated with this kind of Internet shopping, including correlating additional information to the card information or decoding the information.

With respect to Claim 33, the Examiner in his Answer did not challenge the fact that there is no teaching or fair suggestion of this claim recitation in combination with the recitations of claim 28.

The Examiner in his Answer did not challenge the fact that there is no factual support for the assertion the Examiner makes. The rejection of claim 33 is improper on this basis and should be reversed. The Examiner in his Answer did not challenge the Applicant's assertion that the Examiner conceded that Schneier does not explicitly show "entering a PiN number on said computer peripheral or workstation." As such, this rejection is improper and should be reversed.

With respect to claim 34, the Examiner in his Answer did not challenge the Applicant's assertion that the art, alone or in combination fails to teach or fairly suggest the elements of Applicant's claimed kit: a card reading peripheral, a personal computer and a remote computer other than the personal computer or workstation connected to the Internet. The Examiner in his Answer did not challenge the Applicant's assertion that he had failed to supply any evidence to

show that these elements of Applicant's claimed kit are taught or fairly suggested in the art of record, alone or in combination. The rejection of claim 34 is improper and should be reversed.

The same argument pertains to the rejection of claims 35 and 36. Claims 35 and 36 were rejected on the same grounds as claim 34. The Examiner failed to challenge the Applicant's assertion that the citations to the art, alone or in combination, do not assist the Examiner in making out a *prima facie* case of obviousness. The Examiner did not dispute that the reference does not solve the problem of Internet shopping or that these claim recitations are not suggested in the art. In fact, the Examiner in his Answer did not challenge the Applicant's assertion that the Examiner admitted that Schneier does not explicitly teach or suggest Applicant's claimed recitations of: a monitor, at least two speakers, and a keyboard or the recitation of claim 36 related to the Internet.

CONCLUSION

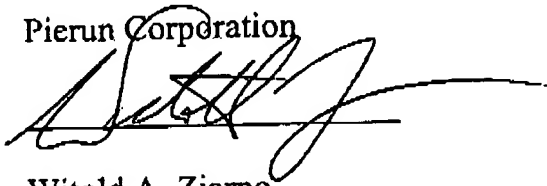
The Examiner's rejections are based upon impermissible core factual findings under *In re Zurko* and must be reversed on that basis. Moreover, the Examiner in his rejection of Applicant's claims promulgates a new standard for establishing a *prima facie* case of obviousness. Under the Examiner's new standard it is permissible to combine the alleged teachings of non-analogous sources of art using an Applicant's specification as a template to allegedly reconstruct an invention. This has never been the law to establish a *prima facie*

case of obviousness, and this is an error of law. The Examiner must be reversed.

A new standard for establishing a *prima facie* case of obviousness that permits the combination of alleged teachings from non-analogous sources of art by simply picking and choosing features from non-analogous sources of art to reconstruct an invention without an suggestion to do so in the art or in knowledge commonly known in the art must not be permitted. The Examiner has de facto conceded the patentability of the Applicant's invention by not challenging or disagreeing with the Applicant's assertions and facts in the Appeal Brief. The Applicant respectfully requests that the Examiner's rejections of all of the claims pending in this application be reversed.

Respectfully submitted,

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